

only member is Suntex Waterfront Advisors, LLC which is also organized under the laws of the State of Texas, with its principal places of business in Dallas, Texas.

JURISDICTION AND VENUE

3. The court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. § 1332 in that the amount in controversy exceeds \$75,000, exclusive of interest and costs, and is between citizens of different states, the Commonwealth of Pennsylvania and the State of Texas.

4. Venue is proper in the United States District Court, District of New Jersey, because the property that is the subject of the insurance claim asserted by Suntex against ACE, the Liberty Landing Marina, is located in the State of New Jersey at 80 Audrey Zapp Drive, Jersey City, New Jersey 07305.

5. An actual case in controversy of a justiciable nature exists between the parties involving the rights and liabilities concerning a certain first-party property insurance policy, in which litigation is imminent and inevitable, and which controversy may be determined by a judgment of this, without other, action.

NATURE OF THE ACTION

6. This is an action for declaratory judgment pursuant to Rule 57, Federal Rules of Civil Procedure, and 28 U.S.C. § 2201 to determine and resolve questions of actual controversy arising in connection with a certain contract of insurance issued by ACE to Suntex. By this action ACE seeks declaratory relief to establish that ACE has properly applied the coinsurance provision contained in the policy issued to Suntex in connection with its claim for loss or damage to the Liberty Landing Marina caused by Superstorm Sandy.

FACTS

7. ACE issued a Boat Dealers/Repairers and Marina Operators Policy, Policy No. Y07192976 003, for the period October 29, 2012 to October 29, 2013 (the “Policy”). A copy of the policy is attached as Exhibit A and incorporated herein.

8. The Policy affords different coverages, including property damage coverage, for designated marina locations across the country. The Liberty Landing Marina and other covered locations are listed in the Supplemental Declarations: Schedule of Locations, form MA-38348.

9. The limits of liability for dock property at the scheduled marinas, including the Liberty Landing Marina, are set forth in the Scheduled Property Endorsement, form MA-27530. The amount of insurance listed for the Liberty Landing Marina dock property is \$3,493,077.

10. The introductory paragraph of the Scheduled Property Endorsement also imposes a 90% coinsurance requirement applicable to all of the properties listed including the Liberty Landing Marina:

This company shall not be liable for a greater proportion of any loss or damage to the property insured than the total amount of insurance bears to 90% of the replacement value of the property insured at the time of loss or damage, but in no event to exceed the limit of liability of the schedule of property insured. All insured property 15 years and older are only insured on an Actual Cash Value basis at the time of loss; regardless of the Part A. Property Damage limit shown below.

This provision is hereinafter referred to as the “coinsurance provision.”

11. Pursuant to this coinsurance provision, ACE “shall not be liable for a greater proportion of any loss or damage to the property insured than the total amount of insurance [\$3,493,077 for the Liberty Landing Marina dock property] bears to 90% of the replacement value of the property at the time of loss or damage.” Conversely, Suntex would be a coinsurer of loss or damage to insured property in the same proportion that the difference [shortfall] between

the amount of insurance purchased for the marina and 90% of the replacement value of the property, bears to 90% of the replacement value.

12. On October 29, 2012, Superstorm Sandy made landfall just north of Atlantic City, New Jersey resulting in significant damage to the Liberty Landing Marina in New Jersey.

13. Suntex gave ACE notice of loss, and made claim under the Policy. ACE began to investigate and adjust the loss. During the course of the adjustment, ACE has periodically made advances and partial payments to Suntex for damage to property at the Liberty Landing Marina that was insured under the Policy.

14. However, a dispute has arisen between the parties over proper application of the coinsurance provision quoted in paragraph 10 above, as a consequence of which the parties are unable to resolve Suntex's claim.

15. ACE and its adjustment team has determined that the minimum replacement value for the dock property at the Liberty Landing Marina insured under the Policy totaled at least \$6,210,906.00. This rendered Suntex a 37.5% "coinsurer" of property damage to property insured under the Policy.

16. ACE calculated this percentage as follows: (1) replacement cost valuation total \$6,210,906.00; (2) $90\% \text{ of } \$6,210,906.00 = \$5,589,815.40$; (3) the dock property was insured for \$3,493,077, meaning the property was underinsured; (4) the coinsurance percentage was calculated by dividing $\$3,493,077$ by $\$5,589,815.40 = .625$. This rendered Suntex a 37.5% coinsurer of the dock property at the Liberty Landing Marina.

17. Suntex is of the view that the total replacement value for the dock property is well within the \$3,493,077 insured value under the Policy, and that no coinsurance penalty should be applied to its claim.

COUNT I
(Cause of Action for Declaratory Relief)

18. ACE realleges each of the allegations of Paragraphs 1 through 17 above as though fully set forth herein.

19. Because of the dispute over the proper application of the coinsurance provision, in particular whether Suntex should be deemed a coinsurer of the loss or damage to the dock property at the Liberty Landing Marina and, if so, in what amount, the parties have been unable to fully resolve Suntex's claim under the Policy.

WHEREFORE, Plaintiff ACE American Insurance Company requests that the Court enter judgment declaring that:

- a) The claim for damage to the Liberty Landing Marina is subject to the Policy's coinsurance provision;
- b) ACE is not liable for a greater proportion of any loss or damage to the dock property insured under the Policy than the total amount of insurance \$3,493,077 bears to 90% of the replacement value of the property at the time of loss or damage;
- c) Suntex insured the Liberty Landing Marina dock property for less than 90% of its replacement value at the time of loss or damage and is thus rendered a coinsurer for property damage to the dock property in a percentage up to 37.5%; and
- d) Such other and further relief as this Court deems just and necessary.

DEMAND FOR JURY TRIAL

Plaintiff, ACE American Insurance Company, demands a jury trial on all issues so triable.

Dated: February 18, 2015

COZEN O'CONNOR
A Pennsylvania Professional Corporation

BY: /s/ Thomas McKay, III

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